



Comptroller General
of the United States

608105

Washington, D.C. 20548

Decision

Matter of: HDL Research Lab, Inc.

File: B-254863.3

Date: May 9, 1994

Sam Z. Gdanski, Esq., for the protester.
J. Randolph MacPherson, Esq., Sullivan & Worcester, for
Power Ten, Inc., an interested party.
Jeffrey I. Kessler, Esq., and Lucie Sterling, Esq.,
Department of the Army, for the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency reasonably canceled invitation for bids and
terminated award made thereunder, where it found that the
specifications were biased in favor of the awardee and
exceeded the agency's requirements so as to inhibit full
and open competition.

DECISION

HDL Research Lab, Inc. protests the U.S. Army
Communications-Electronics Command's cancellation of
invitation for bids (IFB) No. DAAB07-93-B-Q266, a
100-percent small business set-aside, for encryption
device power supplies, and the termination of the award
to HDL made thereunder.

We deny the protest.

The agency requires two types of power supplies to run the
encryption devices, both of which generate a 28-volt direct
current (DC) output. One type of power supply uses an
ordinary wall socket, alternating current (AC) input--e.g.,
for encryption devices used in buildings--while the other
type operates off DC input that is provided by batteries and
generators--e.g., for encryption devices used in
field operations. Each type is required in two different
configurations (individual and packaged). Both types
(i.e., AC input and DC input) of power supplies can be

configured as packages (i.e., 2-AC or 2-DC input units bundled together) to provide a unit with a redundant capability--that is, if one of the two packaged units fails the other takes over.

Prior to 1987, the agency obtained both AC and DC input power supplies sole source from the original designer, Lambda Electronics. In that year, the agency competed its PP-7506 power supply requirement for the first time on a brand name or equal basis with the Lambda product as the designated brand name. Power Ten won the 1987 competition and furnished the PP-7506A/G, a power supply that is interchangeable with the Lambda PP-7506/G. A second competition, in 1988-89, conducted on a brand name or equal basis resulted in an award to HDL, and HDL furnished units that were designated PP-7506B/G.¹

The HDL AC input power unit design is not the same as the Lambda or Power Ten designs. The Lambda and Power Ten units consist of two individual PP-7516 units that can be separated and operate by themselves, while the HDL unit's two PP-7516B/G "modules" cannot operate independently because they are dependent upon the presence of HDL's chassis which they plug into. Although all three current manufacturers' power supplies are designed for mounting in a standard 19-inch equipment rack, Lambda's and Power Ten's PP-7506 power supplies are 19-inches wide and mounted in the rack in an "over and under" fashion--with one independent 19-inch-wide PP-7516 mounted in a bay over the other independent 19-inch-wide PP-7516's bay, while the HDL PP-7506B/G uses a single two-bay-high, 19-inch-wide chassis into which its two 8.5-inch-wide PP-7516B/G modules are plugged "side-by-side."

In December 1991, agency depot level technical personnel, in the course of performing equipment modifications to Power Ten power supplies, discovered some allegedly defective Power Ten power supplies. Based on this experience, the

¹The agency classifies the power supplies by manufacturing source by adding manufacturer specific letters to the basic unit identification, thus the redundant version power supplies from the agency's first source, Lambda, are designated "PP-7506/G," from its second source, Power Ten, "PP-7506A/G," and from its third source, HDL, "PP-7506B/G." The agency generically refers to the 2-unit power supply as a "PP-7506 ()/G."

agency technical personnel decided in August 1992 to include physical data specifications in the next solicitation that would result in an award to a firm using HDL's design approach. The engineering representatives stated that:

"the physical data specifications forwarded to your office are what we . . . desire. Any discrepancies should be coordinated with this office prior to submission of the final procurement data package. . . ."

They also stated that the next solicitation should include a First Article Test (FAT) requirement that:

"requires that the successful bidder develop the procedures needed for assuring that the specified needs, or Salient Characteristics, were verified by First Article testing. This includes functional operation with a variety of inputs, . . . physical data (dimensions and weight), . . . and environmental tests. . . ." (Emphasis supplied.)

On June 17, 1993, the agency issued the instant IFB. At first blush, the IFB appears to be a sealed bid, brand name or equal procurement with Power Ten as the designated brand name,² although the standard brand name or equal clause was not included in the IFB. In this regard, the IFB was laced with references to Power Ten's power supplies (i.e., PP-7506A/G and Power Ten's corresponding National Stock Number (NSN) 5810-01-275-6665) as the requested brand name, with no mention whatsoever of HDL's PP-7506B/G product designation, although the IFB contains references to the generic designation "PP-7506 ()/G." However, in the specifications it is stated that the PP-7516 "module" must have "a maximum width of 8 1/2" and weigh 31 pounds"--a configuration that can only currently be met by HDL's product.

²The IFB's executive summary states that "[the] purpose of this acquisition is to contract on a firm fixed price basis via sealed bid procedures for brand name or equal power supplies." The summary then proceeds to direct bidders "to section J Attachment #05, Salient Characteristics for Power Supply PP-7506A/G, PP-7516A/G and PP-7505A/G." (As noted above, A/G denotes a Power Ten power supply.)

The agency received three bids at the July 19 bid opening, and reports that, if the agency had waived the FAT, Power Ten would have been the low bidder, but, absent a waiver, HDL was the low bidder. The agency found that:

"[t]he initial technical response, dated August 17, 1993, was to recommend waiver of FAT for both offerors. However, this recommendation was quickly reversed upon management review. The basis for the reversal was that there had been previous problems with power supplies received from both Power Ten and HDL."

The FAT was thus not waived for either Power Ten or HDL, and HDL was awarded the contract. Power Ten protested the award contending, among other things, that either HDL's bid was nonresponsive or the IFB's technical specifications were ambiguous. Power Ten further questioned the agency's revisions of the previously used brand name or equal specifications (e.g., introducing the "()/G" nomenclature and changing the size and weight specifications to reflect HDL's product), advising that it had been fooled by the subtle changes into believing that Power Ten's product met the agency's requirements.

In the course of investigating these allegations, the agency discovered the bias that its technical personnel harbored in favor of the HDL power supplies. The fact that the module width requirement only allowed for HDL's current product to be acceptable had not been communicated to procurement officials. The agency found that there was no support for this requirement since the Power Ten/Lambda configuration could clearly meet the agency's requirements. Although the contracting officer found that Power Ten was not prejudiced by this defective solicitation because it proposed its own unit at a higher evaluated price (i.e., with FAT), he determined that the biased, unsupported and unduly restrictive requirement undermined the competition and may well have discouraged qualified sources from competing. The agency found that this "operated to compromise the integrity of the acquisition and prevent full and open competition in this procurement." Consequently, on December 10, the agency terminated HDL's contract for the convenience of the government and canceled the underlying solicitation. This protest followed.

HDL contends the termination is unnecessary because use of the defective solicitation did not prejudice Power Ten or any other potential offeror. In HDL's view, there was nothing improper in the agency's changing the previously used brand name specifications because the changes were made for "legitimate reasons," namely the need to correct "defects noticed in the field," even though it would force

two of three established sources (Lambda and Power Ten) to reconfigure their commercial power supplies to be considered acceptable.

A contracting agency must have a compelling reason to cancel an IFB after bid opening because of the potential adverse impact on the competitive bidding system of resolicitation after bid prices have been exposed. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); P&C Constr., B-251793, Apr. 30, 1993, 93-1 CPD ¶ 361. The fact that a solicitation is defective in some way does not justify cancellation after bid opening if award under the solicitation would meet the government's actual needs and there is no showing of prejudice to other bidders. Aero Innovations, Ltd., B-227677, Oct. 5, 1987, 87-2 CPD ¶ 332. However, FAR § 14.404-1(c)(10) specifically permits cancellation, consistent with the compelling reason standard, where cancellation is clearly in the government's interest; a contracting officer's desire to obtain enhanced competition by materially modifying specifications to make them less restrictive constitutes a valid reason under this FAR standard. Id.; Diversified Energy Sys.; Essex Elec. Eng'rs, Inc., B-245593.3; B-245593.4, Mar. 19, 1992, 92-1 CPD ¶ 293.

Here, we agree with the agency that the solicitation was defective because the specifications mandating the HDL power supply configuration overstated the government's actual requirements and that the particular requirement reflected unsupported bias in favor of HDL's product by agency technical personnel. The record fairly shows that agency technical personnel were trying to effect a noncompetitive procurement to HDL by giving it an insurmountable competitive advantage through mandating HDL's power supply configuration without any reasonable basis. There is no evidence that HDL's was the only power supply configuration that could satisfy the agency's requirements; to the contrary, it is clear that other configurations, particularly Lambda's, with which there had been no problems and which Power Ten's unit emulated, satisfied the agency's actual requirements.³ Also, in its comments on the agency report, HDL recognized that other configurations could well satisfy the agency's requirements, but since the agency technical personnel knew that HDL's power supplies complied with the agency's performance requirements better than Power Ten's equipment, and given that these personnel lacked the "requisite technical knowledge" to understand the origins of the differences, the agency technical personnel simply revised the requirements to reflect the dimensions used by

³There is no evidence that the reported problems with Power Ten's unit were caused by its particular configuration.

HDL. Specifications based only on personal preference or on a finding that a particular item has superior or more desirable characteristics in excess of the government's actual needs are generally considered overly restrictive. Precision Dynamics Corp., 54 Comp. Gen. 1114 (1975), 75-1 CPD ¶ 402.

The Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(1)(A), mandates that contracting agencies obtain full and open competition. Overly restrictive specifications that are motivated by bias in favor of a particular product over other acceptable products are clearly inconsistent with this statutory mandate and undermine the integrity of the procurement process. See Aero Innovations, Ltd., supra. While it appears true that Power Ten may not have been prejudiced by this defect since it essentially ignored the biased requirement in submitting its bid, the agency has represented that other sources may well have been dissuaded from proposing to specifications that were "wired" to favor one particular product and nothing in the record suggests that the agency's concerns are unfounded.⁴ In this regard, while 66 sources were solicited, only 3 submitted bids. Under the circumstances,

⁴HDL has furnished product literature from 17 power supply manufacturers showing that the industry makes small "stand alone" units for laboratory bench applications and provide rack adapters that allow the user to install one or more of the stand alone units side-by-side in standard 19-inch racks for electronic systems applications. As Power Ten points out, however, the IFB requires each PP-7516 to be able to produce approximately "784 watts of output power (28 VDC x 28A = 784 watts)" and notes that only 1 of the 17 examples appears able to do that in a side-by-side configuration. Of the remaining 16 sources, 4 firms made supplies having the required power and they are all "over-under" units like Power Ten's, 10 firms do not make sufficiently powerful supplies, and the remaining 2 firms cannot comply with other aspects of the solicitation. Thus, based on the evidence of record, specifying HDL's particular configuration could reasonably be found to inhibit potential sources from offering to supply conforming products.

the agency could reasonably find a compelling reason for canceling the IFB and terminating the contract award.⁵ See Sunrise Int'l Group, Inc., B-252892.3, Sept. 14, 1993, 93-2 CPD ¶ 160; Diversified Energy Sys.; Essex Elec. Eng'rs, Inc., supra; Roy McGinnis & Co., Inc., B-243626.2, Aug. 26, 1991, 91-2 CPD ¶ 196.

The protest is denied.

Robert P. Murphy

Robert P. Murphy
Acting General Counsel

⁵HDL has urged that corrective action is improper because the impetus behind the corrective action is Power Ten's allegedly untimely protest. We do not find the timeliness of Power Ten's protest significant since an untimely protest does not bar agency corrective action on an improper award. See DynCorp, 70 Comp. Gen. 38 (1990), 90-2 CPD ¶ 310; Park Inn Int'l Airport, B-248369.2; B-248680, May 20, 1992, 92-1 CPD ¶ 458; International Business Mach. Corp., B-197188, Oct. 21, 1980, 80-2 CPD ¶ 302.